IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 184 OF 1994

The State of Maharashtra.] .. Appellant

Vs

Mukund Namdeo Halunde,]
age 29 years, Occupation Service,]
R/o. Aggawale Chawl, Lonavala.] .. Respondent

Mr.S.M. Shringarpure, A.P.P., for the appellant-State.

Mr. S.M. Gorwadkar, Advocate for the respondent.

CORAM: S.S. PARKAR &
ANOOP V. MOHTA, JJ.

DATED: 18TH FEBRUARY, 2005

ORAL JUDGMENT : [Per Anoop V. Mohta, J.]

1. The accused were charged, tried, but acquitted of the offence punishable under Section 302, 306, 498-A of the Indian Penal Code (for short "IPC"). Therefore, this Appeal by the State of Maharashtra (for short "State") only against the original accused No.1, the husband of the deceased Smt. Chhaya.

2. The deceased married with the respondent on 2nd June, 1986. The alleged ill treatment started after

5 to 6 months of their marriage. On 1st August, 1987, the deceased informed about the ill treatment and beating by the accused to her brother PW4, Ulhas. On 1st February, 1991, at about 2.45 p.m., the neighbours noticed that the deceased was lying inside the house in a burnt condition. The accused was not allowing anybody to enter into the house. However, some persons entered the house forcibly and took the deceased to Sassoon General Hospital, Pune. However, on the same date, she succumbed to the injuries. As per the prosecution, the deceased was burnt by original accused Nos.1 to 3, by pouring kerosene on her person or alternatively, it was a case of suicide, abetted by original accused Nos.1 to 3. PW2, Gangubai, the mother of the deceased, on 2nd February, 1991, had lodged a complaint to that effect, but no action was initiated on the same. API Kalbhor visited the spot, but the house was locked. The Spot Panchanama was recorded on 3rd February, 1991, at about 10.15 p.m. On 15th February, 1991, the complainant, therefore, filed the report in the Police Station. The Inquest Panchanama was also recorded by him and he arrested accused Nos.2 and 3 on 16th February, 1991, and the accused No.1 on 20th February, 1991. After completion of the necessary investigation, the accused were charge-sheeted. All the accused pleaded "not guilty" and claimed to be tried. Their defence was of

total denial. The defence case further shows that the deceased was five months' pregnant and while preparing the *idlis* on the stove, she had sustained burn injuries and succumbed to it. Original accused Nos.2 and 3 were not residing with accused No.1. Therefore, their defence was of false implication.

3. Five witnesses have been examined by the prosecution to unfold its case and one, by the defence. PW1, Pandurang, being a neighbour, claimed to be the eye witness of the incident. PW2, Gangubai, is the mother of the deceased and she is the complainant. PW3, Rekha, and PW4, Vilas, are the real sister and brother, respectively, of the deceased and they have deposed to support the prosecutions' case about the ill treatment and harassment. API Kalbhor, PW5, is the Investigating Officer. Chandrabhan Pawar, DW1, is the defence witness.

4. The learned Judge, after considering the material placed on the record by the prosecution, acquitted all the accused of the offence punishable under Section 302, 306, 498-A of the IPC. Therefore, this State-Appeal only against the husband-respondent / original accused No.1.

5. Heard the learned A.P.P. appearing for the appellant-State and the learned counsel appearing for the respondent. We have noted the respective submissions made by the learned counsel. We have gone through the record of the case.

6. There is no dispute about the death of the deceased. There is no direct evidence to connect the accused with the crime. The prosecution was unable to explain the reason for not initiating action immediately on the basis of the first complaint dated 2nd February, 1991, lodged by PW2, Gangubai. The second complaint was lodged on 15th February, 1991, by PW2, Gangubai, based upon which, the action was set in motion. There is also no justification from the prosecution side as to why the Panchanama could not be recorded immediately on 2nd February, 1998. It was recorded on 3rd February, 1998. The Post Mortem Report was not put to the accused under Section 313 of the Criminal Procedure Code (for short "Cr.P.C."). The doctor who conducted the post mortem examination or any other Medical Officer was not examined to prove the post mortem report. The finding given by the learned Judge, therefore, cannot be said to be perverse and illegal. After going through the record, we find that the order of acquittal, in the facts and circumstances of the case, is correct and

within the framework of law and the record and, therefore, no interference is called for.

7. PW1, Dharma Thosar, a neighbour, who heard the hue and cry, came out of his house and noticed a crowd had gathered in front of the house of the accused. As the accused was not allowing anyone to enter into the house, one Suresh and Vilas pulled him out of the house and entered into the house and found that the deceased Chhaya was lying on the floor having burn injuries. The ambulance was called. The accused along with this witness and others, took the deceased to the hospital at Lonavala. However, the doctor advised them to rush to Pune and accordingly they reached Sassoon General Hospital, at Pune, at about 6.00 p.m. During all this time, she was alive, but no statement of any kind was made by the deceased. This witness has not disclosed the incident to anybody, not even to the relatives of the deceased. This witness has admitted that more than 50 persons were present in front of the house of the accused. Therefore, the evidence of this witness cannot be said to be firsthand and/or immediate in point of time. An independent witness from the locality or from amongst the persons who had gathered at the relevant time in front of the house of the accused was not

examined. We have noted that this witness has answered that till they reached Sassoon General Hospital, the deceased was talking and demanding water. This witness has also deposed that he did not inform the doctor or the nurse as to how the deceased had sustained burn injuries. This witness noticed that the Police were present in the Sassoon General Hospital, Pune. Nothing was informed by this witness or anyone else to the Police. On third day, the statement of this witness was recorded. Before that, the deceased was cremated at Pune. There is nothing in the testimony of this witness to connect the respondent with the crime.

8. PW2, Gangubai Kashale, the complainant the mother of the deceased, expressed her suspicion about the incident, based upon which, the complaint was lodged on 2nd February, 1991. She did refer to some quarrel between the deceased and accused No.2. Being the mother, along with the accused and other relatives, they had performed the last rites of the deceased on 1/2/1991 itself. On the next day, however, the complaint (Exhibit-16) was lodged. On 15th February, 1991, the FIR (Exhibit-17) was lodged at the Lonavala Police Station. She has admitted that while lodging the FIR (Exhibit-17), she made no reference to the first complaint dated 2nd February, 1991 (Exhibit-16). She

was unable to give any reason as to why she had not narrated the incident, as reported by one Yeshwant in the report on 3rd February, 1991. Therefore, this witness also nowhere supports the prosecution case of harassment or she nowhere pin-points that the accused and no one else had committed the crime in question. Except suspicion, there was nothing in the testimony of this witness to support the prosecution case.

9. PW3, Rekha Pathak, the sister of the deceased, visited the house of the deceased after the incident. She also visited the Sassoon General Hospital at Pune. In her cross-examination, she has deposed that the quarrel between the accused and the deceased took place in her presence on 1/2/1991. She further deposed that the accused was demanding money. However, in her cross-examination, she has admitted that she did not inform her mother about this incident, which took place in the morning of 1st February, till 15th February, 1991.

10. PW4, Vilas Kashale, the brother of the deceased, has stated that from the date of the marriage till the date of the incident, he had paid Rs.5,500/- in the year 1986, to the accused. This witness has deposed in reference to the incident dated 18th May, 1987.

However, this witness has also accepted that the dispute was amicably settled and the deceased was living with the appellant thereafter. He came to know about the incident on 1st February, 1991 at 9.00 p.m. He typed the application at Pune itself and lodged the complaint (Exhibit-16) on 3rd February, 1991. He has admitted that there was no statement recorded by the Police that the accused was demanding money directly from him also. He has also admitted that the details of the incident dated 18th May, 1987, were not mentioned in Exhibit-16, and also in two statements dated 3rd February and dated 16th February, 1991. This witness has admitted in his cross-examination that the deceased informed him that she was living happily and asked him to convey accordingly to their mother. This witness has further deposed that as no steps were taken by the Police, he had lodged the second complaint (Exhibit-17) as he came to know after cremation of the dead body about the real incident from other persons. The testimony of the brother and sister in reference to the ill treatment and harassment by the appellant is inconsistent. This witness, nowhere supported the prosecution case that there was continued harassment or ill treatment as sought to be contended by the other sister of the deceased. These contradictions and omissions also raise various doubts in the prosecution case.

11. PW5, A.P.P. Kalbhor, is a PSI who has completed the inquiry of accidental death Crime No.6/91. This witness recorded the spot panchanama, the statement and after the inquiry, submitted the charge sheet. This witness nowhere supports the prosecution case, except proving the documents on the record.

12. In the present case, there is a defence witness who is a neighbour of the deceased. This witness has deposed that after hearing the shouts, he went to the house and noticed that the deceased was lying on the floor in burnt condition. The accused, along with this witness and one Mukund entered into the house and tried to extinguish the fire. This witness has deposed that the deceased informed him in presence of other person that while cooking *idlis*, she caught fire. This witness had also noticed *idlis* in the house. This witness in the cross-examination has deposed that when he entered into the house of the accused, no other person had entered inside the house before him. This witness has further denied that accused No.1 was standing in the door and was abusing and preventing the other persons from entering the house. This witness supports the accused and corroborates his defence.

13. After considering all the above testimonies of the witnesses, we are of the view that the reasoning given by the learned Judge is correct. It is difficult to accept the prosecution case that the death was homicidal. As deposed by DW1, that the deceased herself stated that she suffered burn injuries while cooking food / *idlis*. In the Panchanama (Exhibit-11), there is reference to the pressure cooker and idli plates. The learned Judge, according to us, was right in holding that the prosecution failed to prove the fact that the deceased met with homicidal death. Based on the material on the record, it is difficult to accept the prosecution case that the appellant and no one else had committed the crime. As per the Post Mortem Report, the burn injuries were caused from the scalp to the toe and there was smell of kerosene on the scalp of the deceased. On this sole ground, it is difficult to accept that the accused had poured or sprinkled kerosene on her person and set her on fire. The possibility of self-pouring or sprinkling of kerosene cannot also be ruled out. We are of the view that it is difficult to link the accused with the crime. According to us, the defence witness cannot be discarded totally, specially when the prosecution has failed to prove beyond reasonable doubt, its own case, as well as, link the accused with the crime. Merely because DW1 is an

interested witness, being a neighbour of the accused, that itself cannot be the reason to discard his testimony. Even if we overlook the testimony of this witness on this ground itself, still as the prosecution failed to bring clinching evidence and as the view taken by the learned Judge is possible view, there is no case to reverse the order of acquittal.

14. The cumulative effect of all this is that there is no reason to interfere with the acquittal order passed by the learned Sessions Judge.

15. There is no substance in the Appeal. The Appeal is, therefore, dismissed. The bail bond is discharged.

[S.S. PARKAR, J.]

[ANOOP V. MOHTA, J.]

[srpasha@hc]